

**DETAILED ACTION**

***Notice of Amendment***

In response to the amendment filed August 27, 2009, amended claims 3, 12, 17, 20, 30 and 45; canceled claims 1 and 10; and new claims 50-51 are acknowledged.

The following new grounds of rejection are set forth:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 12-13, 20, 30, 45-46 and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,955,645 to Zeitels in view of U.S. Patent No. 5,363,838 to George.

**In regard to claims 50-51**, Zeitels discloses a flexible video endoscope comprising a flexible elongate insertion shaft 100 having a circumference (see Figs. 11-13), said insertion shaft being formed with at least one longitudinally extending substantially circular channel 104, said channel including a longitudinal slot contiguous with an outer surface of said insertion shaft, said slot having a transverse dimension smaller than any diameter of said channel (see Figs. 5-6 and 10); a closure member 106 configured to close said channel, said closure member being an elongate strip formed with a pair of parallel longitudinal edges configured to attach to respective

Art Unit: 3739

opposing edges of said longitudinal slot of said insertion member (see Figs. 9a-b), said closure member completing the circumference of said insertion member (see Col. 8, Lines 50-55). Zeitels disclose that lumen 104 provides visualization into a body cavity therethrough (see Col. 5, Lines 25-30) but is silent with respect to an image-carrying component or video component incorporated therein. George teaches of an intubating scope 1 for use with a standard laryngoscope blade 31 to allow a user to see almost simultaneously the more superficial structures of the oral pharynx by direct vision and the deeper structures of the larynx and trachea through the scope (see Fig. 3 and Col. 5, Lines 16-43). George specifically teaches of numerous advantages of inserting an image-carrying component during an intubating procedure (See Col. 3, Lines 30-67). The scope 1 of George comprises video image-carrying components (see Fig. 1 and Col. 4, Lines 47-67). **In regard to claims 12-13**, as broadly as claimed, scope 1 of George, is interpreted as being a catheter. It would have been obvious to one skilled in the art at the time the invention was made to insert the scope 1 through lumen 104 in the apparatus of Zeitels to allow a user to see deeper structures of the larynx and trachea which are not easily viewed directly using standard devices because of anatomic or morphologic irregularities or changes as taught by George.

**In regards to claim 3**, Zeitels discloses an apparatus wherein said channel has a distal end opening and proximal end opening, said slot extending from said distal end opening to said proximal end opening, said closure member closing said slot while maintaining said distal end opening and said proximal end opening unobstructed (see Figs. 1, 5-6 and 11-13 and Col. 5, Lines 25-36).

**In regards to claim 20**, Zeitels discloses a flexible endoscope, wherein the channel extends from a proximal end portion of the insertion shaft to a distal tip thereof (See Figs. 11-13 and Col. 5, Lines 25-30).

**In regards to claim 30**, Zeitels discloses a flexible endoscope, wherein the closure member is slidably connected to the insertion shaft, the closure member being provided with an entrainment element for facilitating manipulation of the closure member to slide the closure member along the slot (see Col. 8, Lines 45-64).

**In regards to claims 45-46**, Zeitels discloses a flexible endoscope, wherein the outer surface 101 of the insertion shaft is a first outer surface and the closure member 106 has a second outer surface, the second outer surface being smoothly continuous with the first outer surface (see Figs. 5-6 and Col. 7, Lines 10-18).

#### ***Allowable Subject Matter***

Claims 17-19 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 3, 12-13, 17-20, 30-31, 45-46 and 50-51 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3739

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. KASZTEJNA whose telephone number is (571)272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew J Kasztejna/  
Primary Examiner, Art Unit 3739

10/29/09